



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

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## VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PRAGMATIC ENVIRONMENTAL SOLUTIONS COMPANY EPA ID No. VAR000517185

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Pragmatic Environmental Solutions Company, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the Pragmatic Environmental Solutions Company facility located at 1866 Technical Street, SE, Roanoke, VA.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
10. "PESCO" means Pragmatic Environmental Solutions Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. PESCO is a "person" within the meaning of Va. Code § 10.1-1400.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

18. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

**SECTION C: Findings of Fact and Conclusions of Law**

1. PESCO owns and operates the Facility in Roanoke, Virginia. The Facility designs and builds numerous solvent recovery and oil recovery systems. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. On November 14, 2008, DEQ staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, DEQ staff made the following observations.
3. The DEQ observed 65 containers during the inspection in and around the space leased by PESCO from the Roanoke Industrial Center. The DEQ and the Roanoke City Fire Marshall's Office numbered the containers 1 through 65 with paint markers to facilitate the tracking of material identification. During the inspection, PESCO representatives were able to identify the contents or alternative ownership of some but not all of the containers. The contents and waste status of the remaining containers was identified subsequent to the inspection, including containers which were the responsibility of Roanoke Industrial Center. Under 40 CFR § 262.11, a generator is required to identify solid wastes and determine whether the solid wastes also meet the definition of a hazardous waste.
4. Seven of the observed containers held varying amounts of waste kerosene. In total, PESCO identified 1,550 pounds of D001 hazardous waste, which was shipped off site on December 12, 2008.
5. In subsequent correspondence, PESCO indicated that approximately four years ago before they had received two drums of liquefied plastic grocery bags from Dave Smith of HTF, INC. Smith asked PESCO to evaluate the material and design a system to turn the material into a diesel fuel type compound. PESCO stated in an affidavit that the company never did any experimental testing or treatability study on the material nor did they develop any equipment to convert the material. They also indicted that they did not add anything to the barrels. Based on this information and the activity for which PESCO was suppose to undertake with the materials, PESCO would be considered the generator under 40 CFR § 232.10.
  - a. First, the request from Dave Smith of HTF, Inc. would constitute a request for a treatability study pursuant to 40 CFR § 260.10 and 261.4(e-f). However, PESCO did not meet all of the requirements to maintain an exemption under 40 CFR § 262.4(e-f) and thus this material became subject to regulation.

- b. Additionally, pursuant to 40 CFR § 262.10, a generator is a person "whose act or process produces hazardous waste...or whose act first causes a hazardous waste to become subject to regulation." PESCO's actions with the hazardous waste caused it to first be subject to regulation in both failing to meet the treatability study exemption and in shipping the material off as hazardous waste.
  - c. Additionally, this hazardous waste amount would be considered generated at the same time given that all of the material was sent to PESCO all at the same time, managed by PESCO together, and shipped off together by PESCO. The amount of waste of the two barrels was over the 100 kg threshold for CESQG.
6. The remainder of the 1,550 pounds of hazardous waste that was generated by PESCO was kerosene material used as parts washer in the maintenance shop.
7. PESCO had not submitted a RCRA Subtitle C Site Identification Form (EPA Form 8700-12) to obtain a permanent or temporary EPA identification number as a SQG of hazardous waste. Under 40 CFR § 262.12, a generator must not treat, store, dispose of transport, or offer for transportation, hazardous waste without having received an EPA identification number.
8. The containers of hazardous waste were located in an area of the Facility called the "Pigeon Cave." The containers were haphazardly placed between other materials. DEQ staff had to climb over various obstacles to observe the containers and mark the containers with numbers. 40 CFR § 262.34(d)(4) requires SQGs to comply with Subpart C of Part 265 which includes maintaining proper aisle spaces between containers.
9. The hazardous waste containers were not labeled with the words "Hazardous Waste." The hazardous waste containers were not marked with the accumulation start dates. 40 CFR § 262.34(d)(4) requires a SQG to comply with 40 CFR § 262.34(a)(2)-(3) and requires the marking of the hazardous waste containers with the words "Hazardous Waste" and the accumulation start date.
10. PESCO had not ensured that all employees are thoroughly familiar with proper waste handling and emergency procedures as is evidenced by the lack of adequate aisle space, the absence of labels with the words "Hazardous Waste," and the lack of markings with the accumulation start date. Under 40 CFR § 262.34 (d)(5)(iii), the generator must ensure all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
11. PESCO had not performed weekly inspections of hazardous waste containers to ensure they are not damaged or leaking. 40 CFR § 262.34(d)(2) requires SQG storing hazardous waste in containers to comply with 40 CFR 265 Subpart I which requires weekly inspections of hazardous waste containers.

12. On November 18, 2009, based on the inspection and follow-up information, the DEQ issued a Notice of Violation to the PESCO for the violations described in paragraphs C(3), (5)-(9), above.
13. On February 26, 2009, March 17, 2009, and June 19, 2009, PESCO submitted written responses to the NOV.
14. On May 15, 2009, DEQ staff met with representatives of PESCO to discuss the violations, including PESCO's written responses.
15. Based on the results of the November 18, 2009, inspection, the May 15, 2009, meeting, and the documentation submitted on February 26, 2009, March 17, 2009, and June 19, 2009, the Board concludes that PESCO has violated Va. Code and Regulations as described in paragraph C(3), (5)-(9), above.

**SECTION D: Agreement and Order**

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,100 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
September 1, 2010	\$1000
December 1, 2010	\$900
March 1, 2011	\$900
June 1, 2011	\$900
September 1, 2011	\$900
December, 2011	\$900
March 1, 2012	\$900
June 1, 2012	\$700

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right demand in writing full payment of the entire remaining balance under this order by PESCO, and the entire remaining balance of the civil charge shall be immediately due and owing. PESCO shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

5. PESCO shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxx)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF)

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of PESCO for good cause shown by PESCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, PESCO admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. PESCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. PESCO declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by PESCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. PESCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. PESCO shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PESCO shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the PESCO intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and PESCO. Nevertheless, PESCO agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. PESCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to PESCO.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve PESCO from its obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by PESCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of PESCO certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind PESCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of PESCO.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, PESCO voluntarily agrees to the issuance of this Order.



And it is so ORDERED this 18 day of October, 2010.

Melanie D. Davenport

Melanie D. Davenport, Director, Division of Enforcement  
Department of Environmental Quality

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Pragmatic Environmental Solutions Company voluntarily agrees to the issuance of this Order.

Date: 8/11/10 By: [Signature]  
Luke Staengl President and CEO  
Pragmatic Environmental Solutions Company

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 11 day of August, 2010, by Luke Staengl who is President and CEO of Pragmatic Environmental Solutions Company, on behalf of the corporation.

[Signature]  
Notary Public

266121  
Registration No.

My commission expires: 12/31/12

Notary seal:

## APPENDIX A SCHEDULE OF COMPLIANCE

PESCO shall:

1. **By September 1, 2010**, submit to DEQ an inventory of all solid waste on-site and documentation of whether any of the identified solid waste(s) is hazardous waste(s) pursuant to 40 CFR § 262.11. If any hazardous waste is identified, submit documentation indicating how the hazardous waste is being managed on-site in accordance with the VHWMR or documentation indicating that the hazardous waste has been shipped off-site to an appropriate facility in accordance with the VHWMR.
2. **By September 1, 2010**, submit a complete, detailed plan to DEQ to track receipt of samples from off-site customers and their ultimate disposition at the Facility. The plan shall include procedures to be followed where the samples are not returned to the customer. The plan shall also include methods and procedures to handle un-wanted or un-solicited material(s) received at the Facility. The plan shall also include measures to ensure proper identification of hazardous wastes as detailed in the plan required by Item 3. PESCO shall respond and address any deficiencies noted by DEQ in the plan within 20 days from receipt. PESCO shall also change or alter the plan if so requested by DEQ and shall implement such changes or alterations within 10 days from receipt.
3. **By September 1, 2010**, submit a complete, detailed plan to DEQ to ensure future proper identification of hazardous waste generated on site by appropriate, approved test methods and methods and procedures that will be taken at the Facility to avoid speculative accumulation of material(s). PESCO shall respond and address any deficiencies noted by DEQ in the plan within 20 days from receipt. PESCO shall also change or alter the plan if so requested by DEQ and shall implement such changes or alterations within 10 days from receipt.
4. **By November 1, 2010**, implement at the Facility the plans submitted pursuant to Items 2 and 3 including any changes or alterations if so requested by DEQ.
5. Comply with all the requirements found at 40 CFR § 262.34(d) if PESCO should at any time while this Order is in effect become a SQG. If PESCO's generator status should change at any time, PESCO shall notify DEQ within 10 days of such change.
6. All submittals shall be sent to:

Justin L. Williams  
Waste Enforcement Manager  
DEQ Central Office  
629 E. Main St.  
Richmond, VA 23218